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Statement in Support of Raised Bill No. 973, An Act concerning Approval of Medicaid

Benefits Due to Undue Hardship

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[On behalf of Members of the Board of Directors and the Public Policy

Committee of the Alzheimer's Association, Connecticut Chapter]

The Alzheimer's Association is a donor supported, non-profit organization serving the needs of families, health care professionals, and those individuals who are affected with Alzheimer's disease and related dementias. The Association provides information and resources, support groups, education and training, and a 24 hour, 7 day a week Helpline.

Both of us are elder law attorneys and we have dealt with situations in which the Department of Social Services (the "Department") has refused Medicaid approval or imposed lengthy penalty periods because of transfers that occurred during the lookback period (presently five years) that either cannot be explained by a person with dementia or that were given to children that do not have the ability to repay.

The Department's Uniform Policy Manual contains a provision, Section 3025.25, which deals with the "undue hardship" concept. It provides that the Department will not impose a penalty if the transferred asset was the primary residence, the long term care facility threatened eviction, and the transferor established that the transferee was no longer in possession of the

transferred asset and had no other assets with which to pay the cost of care. In addition, if the individual was "incompetent" at the time of the transfer, the transfer would not cause a penalty period. Department procedures say that the worker should determine "incompetence" from discussion with family members and professionals, as appropriate, as well as examining legal and medical records.

From the standpoint of the Alzheimer's Association, Connecticut Chapter, many of the situations involving undue hardship also involve individuals with dementia or other cognitive impairment. The present regulations state only that when an individual is incompetent at the time of the transfer, the transfer does not cause a penalty period. The Chapter asserts that this broad brush treatment is insufficient in defining people with dementia or other cognitive impairments. This present provision also refers only to the primary residence as being transferred.

The Federal Deficit Reduction Act of 2005 (DRA), included a provision for undue hardship involving transfers. Generally, the DRA statutory provision was an adoption of what the CMS State Medicaid Manual already required.

The Department regulations proposed under the Deficit Reduction Act included a new Section 3029.25 to implement the undue hardship law. In that section, there was no provision for the exception of people suffering from dementia or other cognitive impairments. The proposed finalized regulations which were submitted to the Legislative Review Committee after input by various individuals and groups again did not include reference to individuals suffering from dementia. It did include language stating that the long term care facility has to threaten the individual with eviction due to non-payment and the individual has to exhaust all legal methods to prevent the eviction.

The Alzheimer's Association joined with a group of elder law attorneys in objecting to the language of the undue hardship provision and certain changes were subsequently made after the Legislative Review Committee rejected the proposed regulations. During a period of approximately two years the Department and interested parties negotiated language for various sections of the DRA proposed regulations. Undue hardship was one of four outstanding issues which were being negotiated among the parties.

However, in late October 2010, the Department informed the interested parties that it will withdraw all proposed DRA regulations until the resolution of the case of Lopes v. Starkowski is resolved. This was a case involving annuities and would have reference to the language of the proposed regulations regarding annuities.

At this point, the Alzheimer's Association does not know what standards the Department is using for undue hardship cases. It does know that a substantial number of undue hardship cases involve our constituents; that is, individuals with dementia or cognitive impairment. Raised Bill No. 973 is almost identical to the Department of Social Services' proposed regulation in the form by which it was revised in negotiations between the Department and the Elder Law Bar as well as the Alzheimer's Association. Accordingly, we strongly urge the General Assembly to enact Raised Bill 973 which does set out a procedure for cases of undue hardship.